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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

FCC 95M-144  
51625

In Matter of ) WT DOCKET NO. 94-147  
)  
JAMES A. KAY, JR. )  
)  
Licensee of one hundred sixty )  
four Part 90 licenses in the )  
Los Angeles, California area. )

**O R D E R**

Issued: June 20, 1995

;

Released: June 21, 1995

On June 16, 1995, the Wireless Telecommunications Bureau ("Bureau") and the licensee James A. Kay, Jr. ("Kay") filed a Joint Request For Stay seeking an order to stay this proceeding for 120 days in order to achieve a Consent Order. The Joint Request is accompanied by a Memorandum Of Understanding ("Memorandum") executed by Kay and by the Chief of the Bureau. The Memorandum contemplates, inter alia, the relinquishment to the Commission of all Commission authorizations that are held by Kay, or in which he has an interest, except for allocations to be later identified in the Consent Order which shall be divested by Kay through assignment and sale of related properties. Kay agrees to pay over to the United States Treasury 30% of the gross proceeds of those sales. The Joint Motion further represents that due to the large number of stations involved, "a significant amount of work must be accomplished by both the Bureau and Kay in an effort to assemble a settlement package which can be presented for approval." The Memorandum contemplates that before the expiration of 120 days, the parties will jointly request the Presiding Judge to certify the proposed settlement package to the Commission.<sup>1</sup>

The parties are utilizing procedures for Consent Orders under the Commission's General Rules of Practice and Procedure 47 C.F.R. §1.93 and §1.94. The Consent Order rules have a specific limitation which provides that:

Consent orders may not be negotiated with respect to matters which involve a party's basic statutory qualifications to hold a license.

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<sup>1</sup> The Presiding Judge shall first consider the proposed Consent Order as required under the provisions of §1.94(d) (a presiding judge shall either sign or reject the agreement or make suggestions that negotiations continue on matters included or on matters not included).

47 C.F.R. §1.93(b). It is noted that this revocation proceeding initiated under §312 of the Act by Order To Show Cause, Hearing Designation Order And Notice of Opportunity for Hearing For Forfeiture, FCC 94-147, ("HDO") involves questions of Kay's qualifications to hold a Commission license.

The Joint Petition does not address the prohibition of §1.93(b). However, in a Notification Of Negotiations Which May Lead To A Consent Order that was filed on June 13, 1995, the parties represented that they were "aware of the limitations on consent orders under Section 1.93(b)." It appears to the Presiding Judge that the prohibition should not apply here.<sup>2</sup> The contemplated Consent Order will result in Kay relinquishing or assigning all Commission licenses which he owns or controls. Kay also will commit not to seek any Commission authorizations in the future. This is not a situation akin to a renewal applicant negotiating a settlement in order to retain a license. Compare Talton Broadcasting Co., Memorandum Opinion and Order FCC 77-788, released Nov. 18, 1977, 66 FCC 2d 974 (1977); recon. denied Memorandum Opinion and Order FCC 78-165, released March 10, 1978, 67 FCC 2d 1594 (1978) (the consent order prohibition must be applied in renewal proceedings because the licensee's basic qualifications to continue as a licensee must be determined as a condition to permitting renewal in the public interest).

The standards applied by the Commission in considering a request for a stay are the criteria established by the federal courts. Comark Cable Fund III, 104 F.C.C. 2d 451, 456 (1985).<sup>3</sup> There has been no representation of an irreparable injury to any party by staying this proceeding. There has been considerable discovery made by Kay to the Bureau. There also is a substantial amount of additional discovery to be completed before trial. Most importantly, a stay under the circumstances here would be in the public interest because in 120 days Kay will no longer be a Commission licensee, there will be a substantial monetary payment made to the United States, and there will be no need for further Commission litigation as of this date.

#### Rulings

Accordingly, IT IS ORDERED that the Joint Request For Stay filed on June 16, 1995, IS GRANTED.

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<sup>2</sup> The Presiding Judge has no authority to waive any prohibition of §1.93(b).

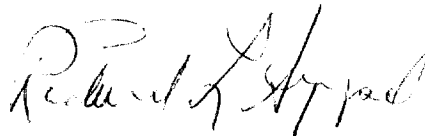
<sup>3</sup> See Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921 (D.C. Cir. 1958).

IT IS FURTHER ORDERED that this case IS STAYED until **October 20, 1995**, by which date the parties SHALL SUBMIT a proposed Consent Order for review by the Presiding Judge.<sup>4</sup>

IT IS FURTHER ORDERED that the Prehearing Conference set for June 29, 1995, and all requirements under Order FCC 95M-142 ARE CANCELLED.

IT IS FURTHER ORDERED that all procedural requirements under Order FCC 95M-106, the Admissions Session set for October 24, 1995, and the Hearing set for November 14, 1995, in Los Angeles ARE CANCELLED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Richard L. Sippel", is written over a light background.

Richard L. Sippel  
Administrative Law Judge

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<sup>4</sup> It is recognized that this is a substantial period of time in which to select properties for assignment and sale. Therefore, any further requests for extension of time will not be looked upon with favor.